

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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STEPHEN J. BURDEN and JACQUELINE S. BURDEN, *derivatively on behalf of General Electric Company*, : 21-CV-182 (JMF)

Plaintiffs, : ORDER

-v- :
SEBASTIEN M. BAZIN, et al., :
Defendants. :
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JESSE M. FURMAN, United States District Judge:

Plaintiffs bring shareholder derivative claims in the name and on behalf of nominal defendant General Electric Co. (“GE”). ECF No. 1. On February 1, 2021, Defendants filed a motion to dismiss the complaint under Rule 12(b) of the Federal Rules of Civil Procedure. ECF No. 83. On February 22, 2021, Plaintiffs filed a Notice of Voluntary Dismissal Without Prejudice and Proposed Order. ECF No. 87. Plaintiffs’ request to dismiss their claims is DENIED without prejudice to renewal upon a showing supported by legal authority that notice to shareholders is not required under Rule 23.1(c) of the Federal Rules of Civil Procedure under these circumstances.

Rule 23.1(c) provides that “[a] derivative action may be settled, voluntarily dismissed, or compromised only with the court’s approval” and that “[n]otice of a proposed settlement, voluntary dismissal, or compromise *must* be given to shareholders or members in the manner that the court orders.” Fed. R. Civ. P. 23.1(c) (emphasis added); *see Papilsky v. Berndt*, 466 F.2d 251, 257 (2d Cir. 1972) (“In general, notice of a proposed dismissal of a derivative suit must be given to nonparty stockholders when the corporate claim has not been adjudicated on the merits.”). The Second Circuit has explained that “[n]otice is essential [when a shareholder derivative action is voluntarily dismissed] to ensure that the dismissal of the derivative suit is in the best interests of the corporation and the absent stockholders.” *Papilsky*, 466 F.2d at 258.

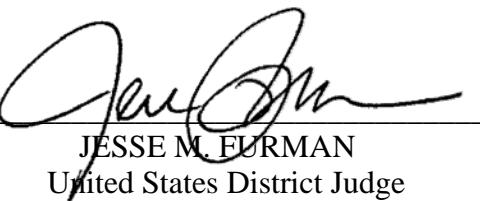
The Proposed Order states that “[n]otice of the voluntary dismissal to shareholders pursuant to Rule 23.1(c) of the Federal Rules of Civil Procedure is not required here because: (i) there has been no settlement or compromise of the action; (ii) there has been no collusion among the parties; (iii) neither Plaintiffs nor their counsel have received or will receive directly or indirectly any consideration from defendants for the dismissal; and (iv) the dismissal is without prejudice.” ECF No. 87. With this brief recitation of factors alone, Plaintiffs have “not shown that there is no risk of prejudice if this case is dismissed without giving shareholders notice and

an opportunity to intervene.” *Cannon ex rel. Bridgepoint Educ., Inc. v. Clark*, No. 13-CV-2645 (JM) (NLS), 2015 WL 4624069, at *5 (S.D. Cal. Aug. 3, 2015); *see also Bushansky v. Armacost*, No. 12-CV-01597 (JST), 2014 WL 2905143, at *5 (N.D. Cal. June 25, 2014) (discussing cases and factors to be considered in deciding whether the Rule 23.1 notice requirement can or should be excused).

Accordingly, Plaintiffs’ request for entry of the Proposed Order is DENIED. Plaintiffs, however, may renew their request to dismiss their claims without notice to shareholders upon an adequate showing, in a letter and new proposed order, demonstrating that there is no risk of prejudice to absent shareholders in excusing notice of the dismissal of these claims.

SO ORDERED.

Dated: February 23, 2021
New York, New York



JESSE M. FURMAN
United States District Judge